

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

1. DAVID NICHOLAS and )  
2. KATHERINE A. NICHOLAS, )  
individuals )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
OKLAHOMA FARM BUREAU MUTUAL )  
INSURANCE COMPANY, an Oklahoma )  
Corporation, )  
Defendant. )

Case No: 09-CV-00010-M

**REPORT OF RICHARD CARY**

I, Richard N. Cary, of sound mind and lawful age state as follows:

**EXPERIENCE**

I graduated from Southwestern Oklahoma State University with B.S. degrees in Accounting and Business Administration. In 1972, I became a claims adjuster for Hartford Insurance Group handling multi-line insurance claims covering northwest Oklahoma. From 1974 to 1977, I served as a Claims Supervisor for Hartford Insurance Group in Oklahoma City and supervised multi-line insurance adjusters. I was later transferred to Birmingham, Alabama where I performed the duties of Claims Manager and Office Manager from 1977 to 1979. I also served as Home Office Supervisor for American Fidelity Insurance Company in Oklahoma City from 1979 to 1980.

In 1980, I began working as an independent adjuster for Western Claims, Inc., primarily handling casualty insurance claims. I worked for Western Claims, Inc., until 1981 when I began working for Wheat Construction in Oklahoma City. As an employee of Wheat Construction, I served as a construction estimator. In 1983, I started C&H Construction Company. As owner of C&H Construction Company, I performed marketing, estimating and job supervision duties.

From 1986 to 1994 I worked for Maryland Insurance Company as a Claims Supervisor. During this time period, I supervised adjusters handling casualty, property, and worker's compensation claims. In 1994, I became a Catastrophe Consultant for Maryland/Zurich Insurance. As a Catastrophe Consultant, I worked in various states establishing catastrophe offices, supervising independent adjusters in the field, and providing reports to Home Office.

I was self-employed as an independent adjuster from 1997 to 2000, and handled casualty and property claims. In 2000, I began working as an independent adjuster for Summit Claims in Oklahoma City. While working for Summit Claims, I investigated casualty and property insurance claims. In 2003, I became self-employed as an adjuster as well as an insurance consultant.

#### **ACHIVEMENTS**

- 1981 - Oklahoma City Claims Person of the Year
- 1992 - President of the Oklahoma City Claims Association
- 2003 – Oklahoma Claims Person of the Year.

#### **OPINIONS**

1. Plaintiff purchased a homeowners policy of insurance through defendant Oklahoma Farm Bureau Mutual Insurance Company.
2. Plaintiff suffered a casualty loss to the dwelling and contents and filed a claim with the Defendant for the amount of the loss. The Plaintiff was not able to reside in the residence and also filed a claim for ALE (additional living expense).
3. Defendant Oklahoma Farm Bureau inspected the damaged property and concluded the Plaintiff did, in fact, sustain a covered loss. A payment was issued for the damage to the dwelling, contents, and ALE.
4. It was later determined that the Plaintiff's damages exceeded the initial claim payment

issued by Oklahoma Farm Bureau and a supplemental claim was presented to Oklahoma Farm Bureau. Defendant then stated the claim was under investigation and indicated the loss might not be covered under their policy of insurance.

6. Plaintiff hired United Services, Inc. (a public adjusting firm) on December 17, 2007 to represent their interest.

7. United Services, Inc. filed a Sworn Proof of Loss on behalf of the Plaintiff with Oklahoma Farm Bureau which Defendant acknowledged in writing they received on March 17, 2008. In the acknowledgement letter, Oklahoma Farm Bureau confirmed they would respond to the Sworn Proof of Loss no later than May 17, 2008, which would have been within the 60 day period of time allowed for an insurance carrier to accept or reject a Sworn Proof of Loss in the state of Oklahoma.

8. Defendant has never responded to the Plaintiff's Sworn Proof of Loss since that time in violation of the Unfair Claim Settlement Practices Act.

9. It is my opinion that Defendant has waived any and all legal rights they may have had by initiating the original investigation of the claim, arriving at an amount of damage, and issuing payment without ever mentioning there was a coverage issue.

10. It is further my opinion that Defendant has waived any and all legal rights they may have had to deny coverage for any part of the claim when they failed to respond to the Sworn Proof of Loss within the 60 day time period in violation of the allowed under Oklahoma law.

11. It is also my opinion that failure to reject the Sworn Proof of Loss has also barred Defendant from paying an amount less than that which was claimed on the Sworn Proof of Loss.

12. It is also my opinion that Defendant is guilty of a breach of contract for failing to pay benefits due and owing under the policy of insurance.

13. It is my opinion that Oklahoma Farm Bureau is guilty of bad faith for failing to complete

a prompt and thorough investigation.

14. It is also my opinion that Oklahoma Farm Bureau did not act according to Oklahoma law and respond in a timely manner to a Sworn Proof of Loss and has continued to refuse to issue payment and therefore is guilty of bad faith.

15. Cases I have testified in as an expert over the past four years are as follows:

Craig and Janie Billingsley v. St Farm Fire & Casualty Co CJ-02-930

Filed in: Comanche County, OK  
Issues: Class action- failure to pay overhead & profit  
My involvement: Testified for plaintiff  
Resolution: Case is still pending  
Plaintiff's attorney: Reggie Whitten (405) 516-7800  
Defense attorney: Crowe & Dunlevy (405) 235-7700

Verlia Ann Freeze v. Farmers Insurance Company CJ-2005-1463

Filed in: Tulsa County, OK  
Issues: Bad faith property claim (fire loss)  
My involvement: Testified for plaintiff  
Resolution: Case is still pending  
Plaintiff's attorney: Timothy McCormick (918) 582-3655  
Defense attorney: Robert Taylor (918) 749-5566

Bill Burgess and Betty Burgess v. Farmers Ins. Co, Inc. CJ-2001-292

Filed in: Comanche County, OK  
Issues: Class action- failure to pay overhead and profit  
My involvement: Testified for plaintiff  
Resolution: Jury verdict- \$80,000,000  
Plaintiff's attorney: Reggie Whitten (405) 516-7800  
Defense attorneys: Crowe & Dunlevy (405) 235-7700 &  
Bill Cobb, Jackson Walker, LLP, Austin, TX

Lindas v. First Floridian Auto and Home Ins. Co. 08-CA-19910

Filed in: Orange County, FL  
Issues: Class action- failure to pay overheard and profit  
Resolution: Case is still pending  
Plaintiff's attorney: Howard A. Snyder, etal (818) 461-1790  
Defense attorney: Robinson & Cole, LLP (941) 906-6850

Johnson v. State Farm Mutual Automobile Ins. Co. CJ-2007-9952

Filed in: District Court of Oklahoma County  
Issues: Breach of contract & bad faith U/M  
Resolution: Case is still pending  
Plaintiff's attorney: Gerald P. Green (405) 235-1611  
Amy Steele (405) 235-1611  
Defense attorney John Gladd (918) 582-8877

16. My billing rate is \$150.00 per hour.

17. The opinions set forth herein are not a list of all the opinions I may have regarding this matter. I reserve the right to supplement this report as information is obtained or produced by the parties.

Signed electronically this 28 day of October, 2009

Richard N. Cary